

the effort or task contracted thereunder.

(c) Profit or fee payable on fixed-price and cost-reimbursable construction or construction management contracts shall be established in accordance with the appropriate procedures and schedules set forth in this subpart.

[63 FR 56851, Oct. 23, 1998, as amended at 74 FR 36364, July 22, 2009]

915.404-4-71-2 Limitations.

Amounts payable under construction and construction management contracts shall not exceed amounts derived from the schedules established for this purpose. Requests to pay fees in excess of these levels shall be forwarded to the Senior Procurement Executive for review and approval.

[63 FR 56851, Oct. 23, 1998, as amended at 74 FR 36378, July 22, 2009]

915.404-4-71-3 Factors for determining fees.

(a) The profit policy stated in 915.404-4-71-1(a) reflects, in a broad sense, recognition that profit is compensation to contractors for the entrepreneurial function of organizing and managing resources (including capital resources), and the assumption of risk that all costs of performance (operating and capital) may not be reimbursable.

(b) The best approach calls for a structure that allows judgmental evaluation and determination of fee dollars for prescribed factors which impact the need for, and the rewards associated with, fee or profit, as follows—

(1) Management risk relating to performance, including the—

- (i) Quality and diversity of principal work tasks required to do the job;
- (ii) Labor intensity of the job;
- (iii) Special control problems; and
- (iv) Advance planning, forecasting and other such requirements;

(2) The presence or absence of financial risk, including the type and terms of the contract;

(3) The relative difficulty of work, including consideration of technical and administrative knowledge, skill, experience and clarity of technical specifications;

(4) Degree and amount of contract work required to be performed by and with the contractor's own resources,

including the extent to which the contractor contributes plant, equipment, computers, or working capital (labor, etc.);

(5) Duration of project;

(6) Size of operation;

(7) Benefits which may accrue to the contractor from gaining experience and know-how, from establishing or enhancing a reputation, or from being enabled to hold or expand a staff whose loyalties are primarily to the contractor; and

(8) Other special considerations, including support of Government programs such as those relating to small, small disadvantaged, and women-owned small business in subcontracting, energy conservation, etc.

(c) The total fee objective and amount for a particular negotiation is established by judgmental considerations of the factors in paragraph (b) of this section, assigning fee values as deemed appropriate for each factor and totaling the resulting amounts.

(d) In recognition of the complexities of this process, and to assist in promoting a reasonable degree of consistency and uniformity in its application, fee schedules have been developed which set forth maximum fee amounts that contracting activities are allowed to negotiate for a particular transaction without obtaining prior approval of the Senior Procurement Executive. In addition, the fee negotiation objective established in accordance with 915.404-4-71-3(a), (b), and (c) shall not exceed the applicable fee schedule amounts without prior approval of the Senior Procurement Executive. To facilitate application to a contract, the fee amounts are related to the total cost base which is defined as total operating and capital costs.

[63 FR 56851, Oct. 23, 1998, as amended at 74 FR 36364, 36378, July 22, 2009]

915.404-4-71-4 Considerations affecting fee amounts.

(a) In selecting final fee amounts for the various factors in 915.404-4-71-3 of this section, the DOE negotiating official will have to make several judgments as discussed in this subsection.

(b) Complexity of a construction project shall be considered by analysis of its major parts. For a project which